

IN THE MATTER between **JW**, Applicant, and **MD and RB**, Respondents.

AND IN THE MATTER of the **Residential Tenancies Act** R.S.N.W.T. 1988, Chapter R-5  
(the "Act");

AND IN THE MATTER of a hearing before **Adelle Guigon**, Rental Officer,

BETWEEN:

**JW**

Applicant/Landlord

-and-

**MD and RB**

Respondents/Tenants

**REASONS FOR DECISION**

**Date of the Hearing:** April 5, 2017

**Place of the Hearing:** Yellowknife, Northwest Territories

**Appearances at Hearing:** JW, applicant  
MD, respondent  
RB, respondent

**Date of Decision:** June 21, 2017

**REASONS FOR DECISION**

An application to a rental officer made by JW as the applicant/landlord against MD and RB as the respondents/tenants was filed by the Rental Office January 11, 2017. The application was made regarding a residential tenancy agreement for a rental premises located in Yellowknife, Northwest Territories. The filed application was personally served on the respondents January 11, 2017.

The applicant alleged the respondents had repeatedly failed to pay rent and had accumulated rental arrears. At hearing, further allegations were made that the respondents had caused damages to the rental premises and left the rental premises in an unclean condition. An order was sought for payment of rental arrears and payment of costs for repairs and cleaning. The application originally requested an order for termination of the tenancy agreement and eviction, however, the respondents had since vacated the rental premises rendering the request moot.

A hearing was scheduled for April 5, 2017, in Yellowknife, Northwest Territories. JW appeared as applicant. MD and RB appeared as respondents.

*Tenancy agreement*

The parties agreed and evidence was presented establishing a residential tenancy agreement between them commencing August 12, 2015. The respondents vacated the rental premises, ending the tenancy agreement February 28, 2017. I am satisfied a valid tenancy agreement was in place between the parties in accordance with the *Residential Tenancies Act* (the Act).

*Rental arrears*

A statement of account entered into evidence by the applicant represents the monthly rents and payments received against the respondents' rent account from August 12, 2015, to March 5, 2017. Rent was established at \$2,600 per month. The last four payments received against the rent account were recorded: February 4, 2017, in the amount of \$400; January 25, 2017, in the amount of \$150; January 5, 2017, in the amount of \$660; and November 25, 2016, in the amount of \$1,260.

In December 2016, the applicant began charging late payment penalties at a rate of 2 percent per month. All the applicant's tenants were notified in writing on December 1, 2016, among other things, that:

"A 1% per monthly interest fee will be applied for late payments for the first 15 days in a month or the higher rate.

A 2% per monthly interest fee will be applied for late payments after 15 days in a month or the higher rate.

A 26% per monthly interest fee will be applied for late payments after 365 in a year."

Sections 41(2) of the Act and section 3 of the *Residential Tenancies Regulations* (the Regulations) state that a penalty for late payment of rent "must not exceed \$5 plus \$1 for each day after the due date that the rent is late, to a maximum of \$65."

Prior to December 2016, the applicant was not charging late payment penalties. To my mind it would be unfair to impose late payment penalties for late rent payments accumulated prior to December 2016. The percentage rates for late payment penalties imposed by the applicant as of December 1, 2016, are not compliant with the Act and Regulations, and therefore are of no force or effect. The applicant is entitled to late payment penalties calculated in accordance with the Act and Regulations, but will only be granted those penalties in this instance calculated on late rent accumulated since December 1, 2016.

The respondents did not dispute the amount of rental arrears claimed, accepting responsibility for them.

I am satisfied the statement of account accurately reflects the payments received against the respondent's rent account. I find the respondents have accumulated rental arrears in the amount of \$9,050 plus late payment penalties in the amount of \$150, for a total amount of rental arrears of \$9,200.

### *Cleaning and repairs*

#### Washing Machine

In August 2016, the respondents reported to the applicant that the washing machine was not working. The applicant hired Arctic Appliance to attend the rental premises to repair the washing machine. Arctic Appliance's invoice number 104052 documents that the washing machine was not spinning and not draining, and that the technician who inspected the machine found that the drain pump was plugged. The technician cleaned out the drain pump, which allowed the washing machine to function again.

The applicant testified that the technician informed him that the drain pump was plugged with debris and coins. The respondent agreed this was what the technician discovered, and the respondent provided a photograph of coins which were allegedly recovered from the pump.

The applicant charged the \$84.00 repair costs against the respondents, claiming that the damages were caused by the respondents' failure to empty the pockets of their clothing prior to putting them through the washing machine. The respondents disputed they were responsible for the damages, claiming that an entry inspection was not conducted when they moved in and that the coins could have been in the machine since before they took occupancy.

The applicant provided a copy of the entry inspection report which was completed after a joint inspection of the premises on August 12, 2015. The applicant attempted to provide a copy of the inspection report to the respondents, but they refused to accept his offer of the document. The respondents did not subsequently report any issues with the washing machine, including whether or not any 'clinking' of coins could be heard, to the applicant prior to August 2016 when the machine stopped functioning. By that point the respondents had been occupying the rental premises and using the provided facilities for a year.

Section 45(2) of the Act establishes the tenant's responsibility to maintain the ordinary cleanliness of the rental premises and all services and facilities provided by the landlord of which the tenant has exclusive use. Sections 42(1) and (2) of the Act establishes the tenant's responsibility to repair any damage caused by the wilful or negligent conduct of the tenant, excepting ordinary wear and tear.

To my mind it was the respondents' obligation to ensure the washing machine was functioning properly, was being used in an appropriate manner, and that it was cleaned of any debris or foreign objects on a regular basis. I believe it is more likely than not that the offending coins were introduced into the washing machine's inner workings during the respondents' tenancy, whether intentionally or not. As a result, the damage to the drain pump was caused by the negligent conduct of the respondents and as a consequence they are responsible for the costs of repairing it. I find the respondents' liable for the costs of repairing the washing machine drain pump in the amount of \$84.

#### Repairs and painting

The applicant originally included a claim for costs to repair and paint the walls in the amount of \$901, however, at hearing he withdrew this request.

#### Cleaning

The applicant claimed costs for cleaning the walls, windows, carpets, living room fan, air vents, washing and drying machines, and main bathroom fan in the total amount of \$582.55. The exit inspection report and photographs support the landlord's claim that the identified items had not been cleaned.

With respect to the carpets, the costs claimed include those for steam cleaning the carpets which the applicant substantiated justification for by providing evidence that the carpets had been cleaned when the respondents took occupancy of the premises, that the respondents had pets (as evidenced in the photographs), and that the carpets had stains at the end of the tenancy. Although the respondents' photographs taken February 26, 2017, do indicate that the carpets were vacuumed, it is evident that they were not steam cleaned. There are a few stains in the carpets which were not identified at the commencement of the tenancy, but I am in agreement with the applicant in this case that it is primarily the presence of the pets that justifies the steam cleaning of the carpet as the respondents' liability.

The respondents did not dispute that the premises was not cleaned as identified, but argued that the premises was not cleaned when they moved in. The respondents submitted photographs of the rental premises date stamped August 15, 2015, – three days after they took occupancy and seven days after the entry inspection was conducted.

The applicant made submissions suggesting that because the date stamp indicated the photos were taken at approximately 1:00 a.m. and the photos clearly reflect they were taken during the mid-day hours that the date they were taken could not be relied upon. While I appreciate the applicant's concern, I am not convinced the time code is as relevant as the date code. Time codes are often overlooked or entered incorrectly with respect to a.m. and p.m. identifiers. I believe it more likely than not that the correct time that these photographs were taken was at approximately 1:00 p.m. (as opposed to 1:00 a.m.) on August 15, 2015. I am further satisfied that the date is correct because the respondents testified to that approximate date at hearing, and the lack of personal property in the premises suggests the photos were taken before the respondents moved their property in, which is consistent with the testimony provided at hearing.

The respondents' photographs taken at entry largely depict items for which the applicant is not making a claim. Of the items for which the applicant is making a claim for cleaning, the following are identified in the respondent's photographs:

- walls - appear to be ordinarily clean, other than water stains from three windows
- windows - appear to be ordinarily clean
- carpets - appear to be vacuumed and steam cleaned
- air vent covers - not cleaned
- main bathroom fan - not cleaned

While it does appear that based on the respondents' photographs that much of the premises (in addition to that identified above) was not in a state of ordinary cleanliness when the respondents took occupancy, I am not convinced that the respondents took their opportunity to document the deficiencies in the entry inspection report, nor am I convinced the respondents adequately notified the applicant of the deficiencies so that he could remedy them.

The respondents' photographs taken at the end of the tenancy do not reflect all of the same things as depicted in the photographs taken at the beginning of the tenancy. Those items which are depicted in both sets of photographs and for which the applicant is making a claim include only the walls and carpets. I have already spoken to the claim regarding the carpets earlier. At the end of the tenancy, the walls themselves for the most part appear cleaned, although there are some stains and marks. It is clear that the baseboards throughout were not cleaned and neither were the walls and floors behind the appliances cleaned.

The applicant submitted photographs he took at the end of the tenancy of the rental premises which depict many of the same items the respondents' photographs depict. In addition to those items, however, the applicant's photographs also show that the window ledges, living room ceiling fan, air vent covers, thermostat cover, and the washing machine were not cleaned.

In all, I am satisfied that the rental premises was not left in an ordinary state of cleanliness for which the respondents are liable. The amount claimed by the applicant for cleaning the premises is reasonable, and the amount claimed for steam cleaning is supported by a service invoice. I find the respondents liable for the costs of cleaning and repairs in the amount of \$582.55.

*Security deposit*

The respondents paid a security deposit at the beginning of the tenancy in the amount of \$1,800 which has accumulated interest in the amount of \$1.11. The applicant appropriately retained the security deposit against the rental arrears, and an order for payment of the rental arrears will account for the security deposit.

*Orders*

An order will issue:

- requiring the respondents to pay rental arrears in the amount of \$7,398.89; and
- requiring the respondents to pay costs of repairs and cleaning in the amount of \$582.55.

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Adelle Guigon  
Rental Officer